

MEMORANDUM FOR: Mr. Fred Hitz, Legislative Counsel
Approved For Release 2004/07/08 : CIA-RDP81M00980R000400080015-4

Fred:

Karpis file

Re the attached, please appreciate the
sensitivity of our problem.



John McMahon
DDO

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DDO/01/01/1991

Approved For Release 2004/07/08 : CIA-RDP81M00980R000400080015-478

OLC #78-3029/32
And. Kampiles

MEMORANDUM FOR: Mr. Anthony A. Lapham
General Counsel

FROM: John N. McMahon
Deputy Director for Operations

SUBJECT: Phil Heymann's Letter of 28 November Asking for
Analysis of National Security Impact of the
Kampiles Prosecution

1. I would prefer that the Agency not respond to Heymann on the Kampiles case specifically. Much too much has already been discussed in both classified and unclassified form.

2. I would, however, like to raise the generic problem we face as to how we can handle counterintelligence cases involving U.S. persons when the basis for that case rests in a DDO operation; i.e., a source is involved. I see the obvious pitfalls in such cases where the DDO information is passed to the Bureau for investigation, and the Bureau in turn pursues the case to the point where prosecution is necessary; i.e., a crime is involved. That prosecution, through the discovery process, jeopardizes the source of the DDO information.

3. In addressing ourselves to this dilemma, we see three avenues of approach, not all of which are satisfactory:

a. Call the case to the FBI's attention so that they can investigate it for attendant leads, but limit any follow-up action to merely neutralizing the case--not carrying it to prosecution. Even in this instance, such action runs the risk of calling attention to our source should the hostile intelligence service involved conduct the counterintelligence analysis of their case.

b. Call the case to the FBI's attention but not carry the case to prosecution, accepting plea bargaining.

c. Obtain legislation which in essence would permit the DCI to submit an affidavit attesting to the veracity of the

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of the prosecution's information concerning the defendant, and
not permit the discovery process to go beyond that affidavit.

4. Our experience with the Department of Justice demonstrates
that present arrangements do not provide adequate protection for our
sources and methods. I would like to see acceptance on the part of
the Department of Justice that the law obliging us to protect our
sources and methods remain paramount in any tendency the Department
might have to prosecute an intelligence or counterintelligence case.

5. I recommend that any continued dialogue with the Department
of Justice on this subject, where specific trials are cited, be
classified.

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Attachment:

Note for DDO fr GC
dated 7Dec78 w/Att

Distribution:

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DDO:JNMCMahon:mob/1414

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